**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.144 OF 2007
IN
CRIMINAL APPEAL NO.149 OF 2007

1.Manjit Singh Sethi &
2.Vicky Manjit Singh. ...Applicants.

**Versus**

State of Maharashtra ...Respondent.

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Mr.Mahesh Jethmalani Counsel i/b. Mr.S.N.Raj, for the Applicants.
Mr.D.S.Mhaispurkar, APP, for the State.
Mr.H.V.Holmagi, Adv. for intervenor.

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**CORAM : SMT.V.K.TAHILRAMANI,J.**

**DATED : 7th March, 2007.**

P.C.:

1. Heard Mr.Jethmalani, the learned Counsel for the Applicants-Orig.accused Nos.1 & 2, Mr.Mhaispurkar, the learned APP for the State and Mr.Holmagi, the learned Advocate for the intervenor-orig.complainant. The application for intervention came to be allowed as the learned Counsel for the applicants as well as the learned APP for the State had no objection to the same.

2. The applicants have been convicted under sections 365, 367, 368, 394, 397 r/w. 34 of IPC. The maximum sentence imposed on them is 10 years. The applicants are now seeking bail.

3. Mr.Jethmalani, the learned Counsel for the applicants has submitted that the applicants-orig.accused Nos.1 & 2 had been released on bail in 1997 itself. They were on bail through out the trial and in the said period there is no record of the applicants causing any harm to the complainant. Mr.Jethmalani has pointed out from the evidence of the complainant PW-1 Kuldeepsingh Harnamsingh Chandok that the complainant has stated in para-20 of his evidence that : "I have not lodged any N.C. or complaint against accused Nos.1, 2 after I gave complaint in this case till today. Prior to the complaint in the present case I knew both the accused and I have good relations with them."

4. Mr.Holmagi, the learned Advocate for the

intervenor on the other hand pointed out that this witness i.e. complainant was in fear of the applicants. However, Mr.Jethmalani has pointed out that infact it was the defence lawyer who had suggested that the complainant should be provided with police protection. This statement was made by the defence lawyer on 13.09.2005 which is reflected from the record.

5. Mr.Jethmalani submitted that during the period that the applicants were on bail, no C.R. or even a N.C. was registered at the instance of the complainant in respect of the applicants. This statement has not been controverted by the prosecution. Even in the affidavit filed by the learned APP, there is no mention of the complainant filing any C.R. or a N.C. against the applicants.

6. Thereafter Mr.Holmagi submitted that the accused were absconding and hence they ought not to be released on bail. In order to falsify this contention, Mr.Jethmalani pointed out that the

incident occurred on 6.1.1997 and the Investigating Officer PW-11 PI Amsiddha Narote in his evidence has admitted that on 8.1.1997 accused No.2 was at Colaba Police Station and he was asked to go away. The I.O. has also admitted that he had never gone to the house of the accused. Mr.Jethmalani pointed out that both the accused have been diligently attending the Court. He submitted that in these circumstances it cannot be said that they had absconded.

7. The prosecution case is that the applicants and some other persons abducted the complainant PW-1 Kuldeepsingh Chandok and thereafter they assaulted him. This was done as the applicants wanted to grab the flat of Rashmi Bhatnagar. The papers relating to the said flat were with the complainant and hence the applicants abducted and assaulted the complainant. Infact the complainant has given the said motive in his evidence in para-10 which reads thus :-

"...The reason for accused 1, 2 and other

two absconding accused kidnapping me and assaulting me was that their intention was to grab the flat of Rashmi Bhatnagar regarding which the papers were with me."

8. The prosecution case entirely rests on the evidence of complainant PW-1 Kuldeepsingh. There is no other eye witness to the said incident. There is no recovery at the instance of any of the applicants. Mr.Jethmalani has submitted that the case is totally false and concocted by the complainant as he wished to usurp the flat of one Rashmi Bhatnagar.

9. The complainant PW-1 Kuldeepsingh Harnamsingh Chandok was working as a clerk with one Advocate. It is his case that on 6.1.1997 he was doing the work assigned to him by his employer Advocate Siyal. The complainant has stated that on that day, the Advocate gave him Rs.50,000/- in cash. At about 4:00 p.m. to 5:00 p.m. when he was in the City Civil Court, accused No.2 asked him to come down as he had some work. When the

complainant came down, he saw both the accused standing near one Irani Hotel adjacent to the City Civil Court. At that time accused No.2 pushed him from behind and while pushing him they put him in a car and thereafter they drove for about two and half to three hours and took him to a godown of one Ajmera Company. There they snatched away his briefcase. In the said briefcase, there was Rs.50,000/- as well as blank stamp papers signed by Rashmi Bhatnagar. It is the case of the complainant that accused No.1 assaulted him with belt, accused No.2 assaulted him with wooden stick and two other persons who were there assaulted him with pipe. Thereafter, at about 1:00 a.m. to 1:30 a.m. they put him in a car and at about 2:30 a.m. they dropped him at Andheri near his sisters house. On account of the assault, his right leg was fractured and there was also hurt to little finger of his left hand.

10. Mr.Jethmalani submitted that the story of the complainant is quite unbelievable and improbable. He has submitted that the incident

took place between 4:00 p.m. to 5:00 p.m. near the City Civil Court and at that time there are a large number of advocates, litigants and police near the Court. Infact, even the complainant in his evidence in Para-16 has stated that at the time of the incident there were many advocates, litigants and police near Irani Hotel. Mr.Jethmalani submitted that if the complainant was being taken forcibly, he would have raised shouts or physically resisted which would have attracted the attention of the police, advocates and litigants who were present at the place. Thereafter it is the case of the complainant that accused No.1 assaulted him with belt. However, PW-7 Dr.Choudhari, who examined the complainant has stated that the type of injuries found on the complainant could not be caused by belt. The Doctor has stated that the injuries are possible by fall or fall from scooter.

11. As far as Rs.50,000/-, which were in the briefcase of the complainant, being robbed by the applicants is concerned, Mr.Jethmalani drew my

attention to the evidence of PW-6 Baghel Singh. It is the prosecution case that the said Rs.50,000/- was given on 6.1.1997 by PW-6 Baghel Singh to Adv.Siyal, who in turn gave it to the complainant. It has been brought out in the evidence of PW-6 Baghel Singh that infact he had handed over the said amount of Rs.50,000/- to Advocate Siyal on 7.1.1997 which was a Tuesday and not on 6.1.1997. In the light of this evidence, the said amount of Rs.50,000/- could not have been in the briefcase of the complainant when he was abducted on 6.1.1997.

12. Mr.Jethmalani pointed out that though the incident had occurred between 4:00 p.m. to 5:00 p.m. on 6.1.1997 and the complainant was left near the house of his sister at about 2:30 a.m. on 7.1.1997, the FIR came to be lodged by him after 7:00 p.m. on 7.1.1997. The medical evidence on record, especially Exh.46 shows that the complainant was alert and conscious. In such case the delay in lodging the complaint, itself creates doubt in respect of the prosecution

evidence.

13. As far as documents i.e. two blank signed stamp papers which were given by Rashmi Bhatnagar in respect of flat at Aaram Nagar, Andheri (W), which is supposed to be the motive for abducting and assaulting the complainant, it is the defence of both the applicants that the said flat had infact been sold by Rashmi Bhatnagar to them in 1995 and hence there was no question of kidnapping the complainant in 1997 in connection with the said flat.

14. As far as the above aspect is concerned, the learned Sessions Judge has observed that it is the case of the accused that they had purchased the property from Rashmi Bhatnagar and Rashmi Bhatnagar was not examined by the prosecution as the accused had threatened, pressurised and prevented her from coming to the Court and telling the truth before the Court. The learned Sessions Judge has observed in Para-86 of the judgment that :- "Had there been any truth in the case of

accused Nos.1 and 2 regarding they purchasing this premises at 73, Aaram Nagar, Andheri, previously and lawfully from Rashmi Bhatnagar, then they would have definitely examined Rashmi Bhatnagar as their witness and they would have unfolded the truth as against PW-1 which is not done." The learned Sessions Judge held that therefore the defence of accused Nos.1 & 2 is totally false and it has to be rejected.

. It is difficult to fathom on what basis these observations have been made by the learned Sessions Judge in her judgment because infact the accused persons have examined Rashmi Bhatnagar as a defence witness. She is examined as DW-1. In such case, the learned Sessions Judge observing as above in respect of Rashmi Bhatnagar, does not stand to reason. As far as Rashmi Bhatnagar not being available, there is no evidence that any witness summons was issued to Rashmi Bhatnagar by the prosecution. Rashmi Bhatnagar was living abroad since about 1995 and infact she was in Muscat for most of the time. Rashmi Bhatnagar has

also got produced her passport (Exh.121) which bears out this fact. Moreover, the applicants have examined the said Rashmi Bhatnagar as a defence witness and Rashmi Bhatnagar has stated that she knew the complainant as well as the applicants. She has further stated that she sold the flat at Aaram Nagar, Andheri to the applicants. She has stated that on 13.09.2005 accused No.2 gave her bank draft of Rs.8 lakhs for Greater Bombay Co-operative Bank Limited which was towards the completion of purchase of her premises at Aaram Nagar, Andheri. She has identified the sale-deed relating to the sale of flat by her to accused No.2. The original sale-deed and carbon copy of the same are taken on record and marked as Exh.80 & Exh.80A respectively. Rashmi Bhatnagar has stated that she had given the stamp papers in respect of the said flat to Advocate Siyal as the flat was not yet transferred in her name by MHADA in 1995. Rashmi Bhatnagar has stated that she has given complaint against PW-1 before MHADA and before Versova Police Station prior to making original sale-deed (Exh.80). She has stated that

infact PW-1 had threatened her on many occasions regarding the said property. From this, it is seen that the very basis or motive which is stated by the complainant for the accused abducting him, falls to ground.

15. As far as the learned Sessions Judge's observation that Rashmi Bhatnagar had been threatened and pressurised by the accused to not appear in the Court, Rashmi Bhatnagar has stated that the Police Station had not issued or served any summons to her in the case.

16. Mr.Holmagi contended that the reason for kidnapping the complainant was not just the two blank stamp papers signed by Rashmi Bhatnagar, but, it was also for the file containing the papers relating to the flat of Rashmi Bhatnagar at Aaram Nagar, Andheri, which were with the complainant. In support of this contention, he has pointed out the evidence of PW-4 Mrs.Guljeetkaur Kuldeepsingh Chandok, who is the wife of the complainant. PW-4 Mrs.Guljeetkaur has

stated that on 6.1.1997 at about 10:45 p.m. her mother informed her that there was a call from Kuldeepsingh (complainant) that she should go with the file of Rashmi Bhatnagar to the ticket window of Ulhasnagar railway-station and should hand over the file to one Santosh. Accordingly, she went there and waited but nobody turned up hence she returned home. When she returned home her mother told her that the complainant i.e. husband of PW-4 Guljeetkaur had called and stated that he would come home at about 1:30 a.m.. Thereafter, her neighbour told her that there was a telephone call from her husband i.e. complainant, but, by the time she went to answer the phone call, the phone line was dead. Again another neighbour came and told her that there was a phone call from Kuldeepsingh (complainant). Again she went to answer, but, the line was dead. Thereafter a telephone call was received by her neighbour and the call was from her husband (complainant) and he asked her (Guljeetkaur) whether she had not gone to railway-station with the file. Thereupon she informed him that she had gone but she did not

find anyone there, hence she returned home.

17. However, after perusing the evidence of PW-4 Guljeetkaur, it is pertinent to note that she has stated that on many occasions her husband i.e. complainant called her and spoke to her or to her neighbours. However the complainant at no point of time states that he himself had made any telephone calls to his wife or to their neighbours or that he had any conversation with his wife. Thus, *prima facie* I am not inclined to place any reliance on the evidence of PW-4. Moreover even if the evidence of PW-4 is taken into consideration it is seen that the alleged file relating to the flat was not handed over by her to anyone. In such case if at all the complainant had been abducted with the sole purpose of the accused persons getting the file relating to the flat of Rashmi Bhatnagar, the accused persons not having got the file would not have left the complainant at about 2:30 a.m. near the house of his sister, but, infact they would have got hold of the file and thereafter released the

complainant.

18. On looking to the entire prosecution evidence, *prima facie* there appear to be material discrepancies in the said evidence which *prima facie* creates doubt regarding the prosecution case. Hence I am inclined to release the applicants on bail.

19. Mr.Mhaispurkar has stated that the applicants do not have a clean record and there are various cases registered against applicant No.1. Mr.Jethmalani has pointed out that the cases are mostly under Section 294 of IPC, which is because the applicant No.1 is the President of Dance Bar Association and these cases are registered in respect of the Dance Bar. As far as applicant No.2 is concerned, he is involved in only one case. The said case is under Section 294 of IPC which again relates to Dance Bar.

20. *Prima facie* looking to the facts of the case and the evidence on record, I am inclined to

grant bail to the applicants.

21. The applicants to be released on bail in the sum of Rs.50000/- each with one or two sureties to make up the said amount. The applicants shall report to Colaba Police Station once in a fortnight, till the disposal of their Appeal. Application is disposed of accordingly.

22. At this stage, Mr.Holmagi seeks stay of this order. Application for stay is rejected. It is always open to the complainant to prefer an application for cancellation of bail.

**(SMT.V.K.TAHILRAMANI,J.)**